IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rajkamal @ Kamal @ Chhotu @ Pappu @ Sajan Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.1259/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 9-9-2002 in Sessions Case No.112/2000 passed by Sh. Vinay Kumar Goswami, RHJS, Judge (Mahila Utpidan & Dowry Cases) Additional Sessions Judge Jaipur District Jaipur.

Date of Judgment: March 08, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Santosh Kaushik, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in this appeal is to the judgment dated September 9, 2002 of learned Judge (Mahila Utpidan & Dowry Cases) Additional Sessions Judge Jaipur District Jaipur whereby the appellant Rajkamal @ Kamal @ Chhotu @ Pappu @ Sajan was convicted and sentenced as under:-

U/s.376 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

U/s.366 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer simple imprisonment for two months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Roop Narayan submitted a written report on April 11, 2000 at Police Station Sanganer Jaipur with the averments that his daughter Mala (fictitious name) aged 13-14 years studying in VIII class was missing since April 9, 2000. On that report a case was registered and investigation commenced. Appellant was arrested, statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Judge (Mahila Utpidan & Dowry Cases) Additional Sessions Judge Jaipur District Jaipur. Charges under sections 363, 366 and 376 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 6 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant did not assail the finding of conviction, but canvassed that in the facts and circumstances of the case imposition of sentence of 7 years was too harsh. Learned Public Prosecutor however opposed the contention.

4. Having scanned the material on record, I find that appellant was 22 years of age on the date of offence. The offence was committed by him in his youthful exuberance. There are other extenuating circumstances also that in my opinion warrant imposition of lesser sentence. A look at the statements of prosecutrix goes to show that she herself agreed to accompany appellant and she together with the appellant travelled on-foot to Sheopur and thereafter in auto-rickshaw from Sheopur to Bharatpur. After staying

together in Dharamshala, they went to Alwar, Rewari, Delhi and Niwai from where she was nabbed by the police. During entire odyssey the prosecutrix kept mum and did not make hue and cry. The Age of prosecutrix according to Ossification test was between 14 to 16½ years. In the facts and circumstances of the case offence under section 366 IPC is not established.

5. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

6. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383) wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

7. For these reasons, I partly allow the appeal of appellant

Rajkamal @ Kamal @ Chhotu @ Pappu @ Sajan and while maintaining his conviction under section 376 IPC, I reduce the sentence from 7 years rigorous imprisonment to 5 years rigorous imprisonment and fine of Rs.1000/- in default to further suffer two months simple imprisonment. I however acquit the appellant of the charge under section 366 IPC.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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